IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/12/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice N. KANNADASAN

W.A. No.550 OF 1999
and
W.A. Nos.328, 329 & 1260 of 2001

W.A. No.550 of 1999:

The Coimbatore District Aided Secondary
and Higher Secondary School Managements'
Association, rep. by its Presidential
Coimbatore ... Appellant

-Vs-

1. State of Tamil Nadu
rep. by Commissioner & Secretary to Government
Education Department
Fort St. George
Chennai 600 009

2. Director of School Education
Chennai 600 006

3. The Chief Educational Officer
Coimbatore

4. Tamil Nadu Non-Teaching Staff Association
Coimbatore District Committee
rep. by its Secretary & Treasurer R. Arumugham
Coimbatore

5. All Teachers Front
rep. by its General Secretary
Coimbatore 2

6. The District Educational Officer
Coimbatore ..... Respondents

Appeal under Cl.15 of the Letters Patent against the common order dt.13-11-89 in W.P. No.12253 of 1989 etc.

!For Appellants :: Mr. V. Ayyadurai
Mr. R.S. Narendhiran
Mr. N. Paul Vasanthakumar

^For Respondents :: Mr. P.K. Rajagopal
Mr. V.R. Rajasekaran, Spl. G.P.

:JUDGMENT

V.S. SIRPURKAR, J.

This judgment will dispose of all the four writ appeals as the subject involved in all the four appeals is common. In all these writ appeals, a common judgment passed by the learned single Judge of this Court, dismissing the writ petitions, challenging the validity of the amendment made to Rule 12(3) of the Tamil Nadu Private Schools (Regulation) Rules 1974 (hereinafter called "the Rules") is in challenge. The learned single Judge upheld the validity of the said amendment.

2. All the petitioners are the Managements of the private schools. An Act came to be passed under the nomenclature "Tamil Nadu Recognised Private Schools (Regulation) Act, 1973" (in short "the Act"), for the regulation of the private schools in the State of Tamil Nadu. Section 56 thereunder empowers the Government to make the rules and it is under this rule-making power that the said amendment came to be passed.

3. Initially, the Government had issued an order, G.O. Ms. No.1502 (Education) dated 23-9-1988 whereby, for the existing Rule 12(3), the following was substituted:
"(3) The School Committee shall consists of not more than the following number of members namely:-
(i) Representatives of the Educational Agency, who shall be nominated by such Educational Agency;
Provided that the employee of the school shall not be nominated by such Educational Agency 6 -Nos.

(ii) Headmaster of the school (ex-officio) 1- No.

(iii) Teaching staff representatives of teachers shall be selected by election 3-Nos.

(iv) Parent-Teacher Association nominee 1-No.

(v) Non-teaching staff (if available) by election 1-No.

Explanation:- Non-teaching staff shall mean the ministerial staff belonging to

Group C and above."

This Government Order came to be passed when the State of Tamil Nadu was under the Presidential rule.

4. The first objection to the rule, therefore, was that by a Government Order, the rule could not be amended and unless such amendment was placed before the Legislature, it could not be a valid rule. However, it has been pointed out that the said rule was in fact kept before the Legislature and was duly passed and, therefore, that challenge was not pursued by the learned counsel for the appellants. We, therefore, proceed on the basis that the amendment to Rule 12(3), which remained unchanged, was brought by a proper amendment and in a proper way. We have to, however, consider the validity of the rule and the challenges before the learned single Judge. They were three-fold.

5. The first challenge was that this amendment is beyond the rule-making power conferred by Sec.56 of the Act to which, we have already made a reference. The second challenge was that this rule is beyond the scope of Sec.15 of the Act and is also contrary to the same and as such, it cannot be a valid piece of legislation. Lastly, it was the case of the petitioners that the amendment is arbitrary, unreasonable and, therefore, not valid.

6. Learned single Judge has dismissed the writ petitions by his common judgment holding that the amendment is a valid piece of legislation and that it was within the rule-making powers of the State Government and so also, there is nothing contrary in the said amendment to Sec.15 of the Act and as such, on that account also, no fault could be found against it.

7. Before proceeding to consider the validity of the order of the learned single Judge and in turn, the validity of the said amendment, it must be clarified that there was a further amendment to the said rule whereby, a part of Rule 12(3) c hanged. The change effected is in clause (iii) where instead of the existing clause, the following amendment was brought:
"(iii) Senior-most teachers of the school 3 Numbers"
Therefore, now, under the amended rule, it would be three seniormost teachers of the school and one senior-most member of the nonteaching staff, if available, would be included in the School Committee.

8. We are not concerned with aforementioned amendments in the present appeals because, mostly the challenge is to the main part of Rule (3)(i) whereby, the number of the representatives of the Educational Agency has been restricted to six and the representation has been provided to the Parent-Teacher Association by inclusion of their nominee as also to the non-teaching staff by providing a representation to such non-teaching employee, who is senior-most person in that category. Explanations have been added in respect of the non-teaching staff and also to the aspect of seniority amongst the teachers. Explanation 2 provides for the purpose of this rule, the seniority shall be determined with reference to the total service rendered

by teachers or non-teaching staff, as the case may be, in any recognised school or schools. Three provisos have also been added with which, we would have no concern because in the impugned amendment brought in by the said Government Order, these explanations as also the provisos were not there at all.

9. In short, the challenge is:
firstly:
to the State Government's power to introduce and define the School Committee by providing representation therein to the persons like the representatives of the Parents-Teachers Association and the nonteaching staff;
secondly:
to the introduction of the representatives of the aforementioned categories not being within the scope of Sec.15 and, therefore, the amendment being contrary to the provisions of the rule and hence invalid; and
lastly;
to the amendment being contrary to the spirit of Article 14.

10. We have already pointed out that the learned single Judge has repelled these challenges and has held the amendment to be within the rule-making power under Sec.56 as also being intra vires Sec.15 of the Act. Learned Judge has taken into consideration the specific language of Sec.56 as also Sec.15, 18 and various other rules while coming to the conclusion that the amendment was a valid piece of legislation.

11. Arguments were advanced by M/s. V. Ayyadurai and Paulvasanthakumar, learned counsel appearing on behalf of the appellants/ petitioners. Shri V.R. Rajasekaran, learned Special Government Pleader (Education) has relied on the judgment of the learned single Judge and has supported these amendments on other grounds also.

12. Learned counsel for the appellants argue firstly that this amendment is beyond the rule-making powers of the State Government under Sec.56 of the Act. For that purpose, learned counsel took us to the text of Sec.15 and more particularly sub-sections (1) and (2) as the section then stood. The section is as under:
"15. Constitution of school committee:- (1) Every private school shall have a duly constituted school committee which shall include the headmaster of the private school and the senior most teachers employed in the private school as provided in sub-section (2).
(Priviso not relevant as it was not available then and was introduced by amendment only in the year 1995)
(2) The number of representatives of the teachers on such constituted school committee shall be such as may be prescribed and different number of representatives may be prescribed for different classes of private schools."
Learned counsel argue that on the backdrop of the language of the section and more particularly because of the language of sub-section (2) read with Sec.56, the legislature could not have introduced two new representatives of the two new categories to the School Committee. This is more particularly because sub-section (2) gives the power only to prescribe the number of the

representative teachers. The argument goes further and suggests that there is no power to put a limitation to the number of the representatives of the Educational Agency and neither sub-section (1) nor sub-section (2) can be spelt so as to provide the power to the Government to make rules in that behalf. It is, therefore, better to see the rule-making power.

13. Sec.56 of the Act reads as under:
"56 Power to make rules.-(1) The Government may make rules to carry out the purposes of this Act.
(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters namely:

(a) all matters expressly required or allowed by this Act to be prescribed;
(b) not relevant
(c) the establishment and maintenance of private schools;
(d) the giving of grants to private schools;
(e) the grant of permission under section 6;
(f) not relevant
(g) nor relevant
(i) the standards of education and teaching and courses of instruction in private school;
(j) not relevant;
(k) not relevant;
... ..."
We have deliberately not quoted the remaining sub-sections and subclauses of sub-section (2) as they were neither relied upon nor referred to by the learned counsel for the appellants or even by the learned Government Pleader. In this behalf, it was urged by the learned counsel for the appellants that the learned single Judge has not considered the language of Sec.56 in its true perspective and there is nothing in the language to introduce a limitation to the number of representatives of the Educational Agency or even to introduce the representatives of the two categories like Parents-Teachers Association and the non-teaching staff.
14. As against this, it is pointed out on behalf of the respondents that the above quoted provisions of Sec.56 would give ample powers.

15. We would, therefore, test the rival contentions on the basis of the clauses quoted by us above. There can be no dispute, atleast from the language of Sec.15(2), as it then stood, that the Government would have a power to prescribe the number of representatives of the teachers on the School Committee. Such power expressly exists via subsection 2(a). The further question is as to whether the Government could go ahead and prescribe a limitation on the number of the representatives of the Educational Agency and introduce representatives from two other categories. It will be proper to see a few definitions for this purpose.

16. The definition of "Educational Agency" is as under:
"Educational Agency in relation to-
(a) any minority school means any person who, or body of persons which, has

established and is administering or proposes to establish and administer such minority school; and
(b) any other private school, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain such other private school;"

The definition of "School Committee" need not detain us because in relation to a private school, it would mean a School Committee constituted under Sec.15 of the Act which we have already quoted. It is, therefore, obvious that in order to test the rules, we would have to read Sec.15 with Sec.56.

17. It was argued by the learned Government Pleader that under Sec.56(2)(a) itself there would be a power to make the rules while the appellants suggest that the language of Sec.15(1) should be read by us as restricting the same to the inclusion of the Headmaster and the seniormost teachers and no further. When we take into consideration the language of Sec.15, it has to be undoubtedly read along with Sec.2 (8) which suggests that the School Committee would mean to be a School Committee constituted under Sec.15. Sec.15(1) provides that every private school shall have a duly constituted school committee, which shall include the headmaster of the private school and the senior most teachers employed in the private school as provided in sub-section (2). This section nowhere suggests that the school committee would be restricted only to the headmaster and the senior most teachers. That simply cannot be the interpretation because that would completely obliterate the role of educational agency. which has a major role to play inasmuch even under the unamended rule 12(3), representation was granted to Educational agency, empowering it to nominate its' representatives. If we read the section in the manner that the appellants want us to do, there would be no question of the rule 12(3) providing for the representation of the Educational agency.

18. Both the learned counsel candidly admitted that they had no difficulty about the unamended rule 12. If that is so, then, necessarily a power would have to be read in the Government even to frame the rules regarding the school committee and providing representations of the various bodies therein besides the headmaster and the teachers. To constitute a school committee is a task of the Educational agency itself as would be clear from the language of amended as well as unamended rule 12(1). Significantly enough, Sec.15 does not create such a task on the part of the Educational agency. That task has been given by the express language of rule 12(1) amended as well as unamended and the rule as it stood then and remained unchanged even after the amendment was not assailed on account of the lack of power of the Government. It is, therefore, obvious that Sec.15 only provides that in every school committee, there would have to be an inclusion of a headmaster and the senior most teachers, whose number shall be prescribed. The section cannot be read in a negative way so as to limit the appointments to the school committee only from these two categories.

19. The user of the word include suggests that there could be other members of the school committee also and necessarily the Government would have the power to provide the representations to such other categories

besides the aforementioned two categories of headmaster and the teachers. This position is all the more obtained because of the opening words of Sec.15 which suggest that every private school shall have a duly constituted school committee. The words duly constituted school committee are extremely important because there is a power given via rule 12(1) to the educational agency to constitute the school committee. However, the school committee must not only be constituted but should be duly constituted as per the express provision of Sec.15. It would, therefore, be the power of the Government to provide the rules for duly constituting the school committee. While Rule 12 (1) envisages this task on the part of Educational agency to constitute a school committee, subsection (3) provides for duly constitution of that committee. It is for this reason that the power of the Government to frame rules as to how the school committee will be duly constituted would have to be read in the language of Sec.15(1). Sec.56(2)(a) would, therefore, have to be read as empowering the Government to frame the rules suggesting as to how a school committee would be duly constituted.

20. Section 56(2)(a) specifically empowers the Government to frame the rules on all matters which are expressly required or allowed by the Act. In our opinion, the opening words of Sec.15 spell out a requirement on the part of the Government to frame the rules suggesting as to how the school committee would be duly constituted. Once that power is found in the language of Sec.15 and via Sec.56(2)(a), the challenge of the absence of power on the part of the Government to frame the rules as to whither away. Sec.56(2)(c) provides that the Government can frame the rules regarding the establishment and maintenance of the private schools. Via 56(2)(i) it can frame the rules for standards of education and teaching and courses of instruction in private schools. The scheme of the Act and more particularly Sec.18 suggests that the general administration of the school has to be done by the school committee.

21. Sec.18 reads as follows:
"Functions of the school committee and responsibility of educational agency under the Act.- (1) Subject to the provisions of this Act and the rules made thereunder, the school committee shall have the following functions, namely:-
(a) to carry on the general administration of the private school excluding the properties and funds of the private school;
(b) to appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service; and
(c) to take disciplinary action against teachers and other employees of the private school.

(2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of that committee under this Act.
(3) For the purposes of this Act, any decision or action taken by the school committee in respect of any matter over which the school committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency."
A very look at subsection (a) would suggest that it is the function of the school committee to carry on the general administration excluding of course the properties and funds of the private school. It is also responsible for

the appointment of the teachers as also to define their duties and conditions of their service. It has the powers to maintain the discipline amongst the teachers and other employees of the private schools and the decisions taken by the school committee are expressly made binding as against the Educational agency. Not only that but any decision or action taken by the school committee in respect of the above mentioned matters is deemed to be the decision or action taken by the educational agency. If the Government has the power under subsection 2(c) to frame the rules regarding the maintenance of the private school as also for providing the standards of education and teaching then, by necessary implication, there would have to be read a power to frame a rule regarding the number of representatives of Educational agency and inclusion of other agencies like Parents-Teachers Association and non-teaching staff agency.

22. In this behalf, it was tried to be argued, though haltingly, that the language of Sec.15, when read with Sec.2(3) suggests the phraseology of "means and includes" and therefore the constituents of the school committee suggested in Sec.15 would be limited to those named in the section.

23. The argument is clearly wrong. If such an argument were to be accepted then, the representatives of the Educational agency would also remain out of the school committee and it would have to be read that the Government had no power even to provide that the school committee would include the representatives of the educational agency because Educational agency is obviously not referred to in the section anywhere. The first such reference to the Educational agency only came by way of a proviso, which was introduced in the year 1995. However, the Educational agency was recognised to be the constituent of the school committee under the old rule also wherein there was no reference to the educational agency in Sec.15.

24. Learned counsel tried to use two rulings of the Supreme Court, they being STATE OF TAMIL NADU AND ANOTHER v. ADHIYAMAN EDUCATIONAL AND RESEARCH INSTITUTE AND OTHERS (1995 -2- LW 498) and KASILINGAM v. PSG COLLEGE OF TECHNOLOGY AND OTHER LW 521). There can be no question of the interpretation given by the Supreme Court to the phrase "means and includes" and holding that the user of such term denotes the exhaustive nature of the definition. Both the cases have been considered by the learned single Judge and we are in agreement with the learned single Judge when the learned Judge says that both the cases would not apply to the present situation. We would hasten to point out that the phraseology used is not "means and includes" but only the word "includes" has been used in Sec.15(1). In that behalf, we would choose to be guided by the decision of the Apex Court in REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION v. HIGH LAND COFFEE WORKS (1991 -3- SCC 617) wherein it is held that the user of the word "includes" suggests the enlargement of the meaning of the preceding words and also suggests that the word comes by way of ' extension' and not with 'restriction' and that it is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and the Supreme Court says:

"and when it is so used, these words or phrases must be construed as

comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include."
It is, therefore, clear that the language of Sec.15 does not at all help the appellants and more particularly the user of the word duly constituted would clothe the Government with enough power to frame rules suggesting as to how the school committee would be constituted. Once that power is read, even the further power to include the other agencies to be the part of the school committee would have to be necessarily read. Therefore, the challenge that the Government did not have the rule-making power under Sec.56 has to be rejected and was rightly rejected by the learned single Judge.

25. The matters, however, do not stop here. The second part of the argument is that originally there was no limitation on the number of the representatives of the Educational agency whereas, it was in addition provided that the headmaster of the school and two or three senior most teachers (depending upon the strength of the teachers) would constitute the school committee. According to the learned counsel, this was quite in keeping with the language of Sec.15. However, by amendment, the number of the representatives of the Educational agency has now been restricted to six and secondly, two new categories have been added as the constituents of the school committee, viz. (1) a representative of the Parents-Teachers Association and (2) a representative of the non-teaching staff of the school. Learned counsel very earnestly argue that the amendments would clearly be contrary to the express language of Sec.15 and, therefore, ultra vires Sec. 15. This argument is also obviously wrong.

26. We have already pointed out, as has the learned single Judge, that firstly the language of Sec.15(1) and (2) provides an inclusive definition of the school committee. It nowhere suggests that the definition is exhaustive and that the school committee would not include any other person except the Headmaster and the teachers. Even at the cost of repetition, we may say that if such a narrow interpretation is given, even the old unamended rule, with which the appellants had no quarrel, would be rendered contradictory to the language of Sec.1 5 and hence ultra vires the section because the section as it stood then nowhere referred to the representatives of the Educational agency and yet the unamended Rule 12 provided for that representation.

27. We have already pointed out that the words duly constituted would clothe the Government with enough powers to frame the rules for duly constituting the school committee. Once that plenary power is read in the Government, it cannot be countenanced that the Government did not have a power to either restrict the number of representatives of the Educational agency or to introduce some other categories like the representative of the Parents-Teachers Association and the representative of the non-teaching staff. The Government, which is empowered to frame rules for the maintenance of the schools as also regarding the standard of education and teaching in the schools, must be considered to have the power to frame the rules regarding the constitution of the school committee, which would also include the power to restrict the number of the representatives of the various categories. After

all, it is only the school committee, which is responsible for managing the school and maintaining the same. The maintenance of the school being the primary function, over which the rules could be framed, a power would have to be read in the Government to frame the rules restricting the number of the representatives of the various categories as also introducing relevant categories to the school committee. We have already made a reference to Sec.18 which suggests the functions of the school committee and the responsibilities of the Educational agency. In our opinion, once a broad interpretation is given to Sec.15(1) and (2), merely because the number of the representatives of the Educational agency is restricted to six and two new categories are introduced to the school committee by amendment, it would not mean that the amendment is contrary to the section or in any manner ultra vires the section.

28. We have already shown as to why the amendments are not ultra vires the section. We have no hesitation in holding that there is nothing contrary in the amendments to the express language of the section which, in our opinion, is liable to be interpreted broadly. We are in agreement with the learned single Judge that the impugned amendment is well within the purview of Sec.15 and there is nothing contradictory in that amendment vis-a-vis the section.

29. Though it was not argued before the learned single Judge, learned counsel for the appellants raised the argument on the aspect of 'unreasonableness' of these amendments and also urged that if the amendments are upheld, the otherwise smooth functioning of the management would crumble down. Learned counsel argue that the constitution of the school committee is so engineered by the amendments that the number of representatives of the Educational agency, which is six, would be equal to the number of representatives of the other agencies, viz. teachers' representatives 3; Headmaster 1; Parents-Teachers Association representative 1; Non-teaching staff representative 1, in all six members. The learned counsel argue, this could create a situation of a deadlock where the Educational agency wants to take a particular decision while the other representatives are not in favour of such decision. Learned counsel cite the example of the disciplinary matter against the teachers, which is the task of the school committee and argue that there could be a situation where a teacher not required or opposed to the Educational agency could never be dealt with effectively by the school committee because of the situation of impasse. Learned counsel points out that all the decisions in the school committee have to be taken by the majority and, therefore, there could be a situation where the representatives of the educational agency could be effectively stopped by the other members of the school committee, their strength being equal to the number of the representatives of the Educational agency.

30. The argument is clearly wrong. Sec.17(3) undoubtedly provides that all the decisions shall be taken by a majority. However, the President or in his absence, the member presiding, has a second or casting vote where there is an equality of votes. It will be clear from the rules and more particularly Rule 12(4) that it is the educational agency which can nominate one of the representatives in the school committee as the President.

Therefore, it is obvious that even if the total number of the members of the school committee is 12, in which only six representatives of the Educational agency, by the casting vote given under Sec.17(3), the educational agency would have a upper hand. Therefore, this criticism cannot be made atleast by the school management that this curtailing of the number of the representatives would create an impossible situation and the functions of the school committee would come to a standstill. We do not see any unreasonableness in limiting the number of representatives of the Educational agency atleast on the ground argued by the learned counsel. This is apart from the fact that if the number of representatives of the educational agency is not limited then the educational agency might flood the school committee by its members and in that case, the democratic set up of the school committee would itself be lost. The educational agency in that case can become autocratic so as to silence any teacher or staff by their sheer majority. In our opinion, the rule limiting the number of the members of the Educational agency is, therefore, well thought out rule.

31. Further it cannot be forgotten that the educational agency is always bound by anything done by the school committee. Under Sec.18(2) if the Educational agency is permitted to flood the school committee with its own members, Sec.18(2) itself would become unworkable as the other representatives would be completely cowed down because of the steamroller majority of the educational agency's representatives. What is expected is that the school committee shall work for the betterment and for uplifting the standards of education. Therefore, we see nothing wrong if there is a provision for stopping the Educational agency being autocratic. In our opinion, on this count this provision cannot be said to be unreasonable or arbitrary as is being argued before us.

32. Secondly, the learned counsel argued that it is the educational agency which provides the funds and the other infrastructure and establishes the school and, therefore, there should not be any representation to the parents or to the non-teaching staff in the school committee because that would result in bringing the clouds on the powers of the representative members of the Educational agency.

33. We have mentioned this argument only to be rejected because, in our opinion, there is nothing wrong if the parents' representative or non-teaching staff representative is included in the school committee so that the parents as also the non-teaching staff would generally have the idea as to what is going on in the school and as to how the school is being run. They would also be a party to the decisions regarding the scholastic, academic and the other activities of the school for which the school committee alone is responsible. Parents of the students and for that matters even the non-teaching staff cannot be viewed as a separate entity from the school. They have a unseverable nexus with the school and its management. In the absence of the representative of the non-teaching staff, there would be nobody to air their grievances and they being the part and parcel of the school, would be entitled to be heard for their grievances. Such representation would

also be congenial as such staff is responsible for the maintenance of the records of the school, etc.

34. In short, we do not think that there is anything wrong in providing the representation to such other categories which we have discussed above. The learned single Judge has also taken a similar view and we are in agreement with that view. In view of the above discussion, we hold that the appeals have no merits and must be dismissed. The judgment of the learned single Judge is confirmed. Under the circumstances, however, we do not pass any orders as to the costs. Connected C.M.P. Nos.5549 and 32136 of 1999 and 756 of 2000 are closed.

Index:Yes
Website:Yes

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